

REMARKS

In accordance with the above amendments, claims 60 and 70 have been amended. Claims 46-48, 59, 68, 72, 76 and 77 have been canceled and new claim 78 has been added. Thus, claims 60-67, 69-71, 73-75 and 78 remain under consideration in this application.

Telephone Interview

Applicants wish to thank Examiners Jagadishwar Samala and Jake Vu for extending to them the courtesy of a telephone conference interview on May 27, 2010. Remarks concerning the substance of the interview appear below.

Substance of the Interview

An Interview Summary dated June 7, 2010 is of record in this application. Regarding the Interview Summary submitted by Examiner Samala, it is noted that one applicant, Carter Anderson, and one representative of the applicants, Attorney Bret E. Field, were omitted from the list of participants and should be added.

Applicants submit that a general discussion of the invention took place and important aspects of the applicants' invention were presented at the outset by inventors Anderson and Morris.

Applicants agree that a further discussion ensued regarding the Marcenyac et al reference (U.S. Application Publication 2004/0146547). Applicants also agree that the parties agreed that the Marcenyac et al reference does not teach any activating

materials such as activated carbon in a disposable system. Applicants agree that the Examiner suggested to incorporate a portion of activated carbon that contains an amount of irritating agent (capsaicin) for reducing the substance abuse in a skin transdermal patch.

Amendments to the Claims

In the amendments to the claims, careful consideration has been made to the conference telephone interview and to applicants' specification and the cited art. In this regard, it should be noted that claims 46-48 and 59 have been canceled and claim 60 has been amended to clarify the dual approach including the activated carbon and the carbon that has been pre-incorporated with an agent selected from irritants and antagonists that will remain with the abusable substance should it be successfully removed from the carbon by an abuser using solvent extraction.

Applicants further believe that the explanation beginning at line 25 of page 5 through the end of that paragraph at line 6 on page 6 (original submission) clearly supports the use of antagonists and irritants broader than those enumerated in the passage. To limit the irritant to capsaicin, for example, is believed unwarranted inasmuch as one skilled in the art could readily discover other irritants that would be just as effective

and thereby deprive applicants of claims of the scope they deserve.

Claim Rejections - 35 U.S.C. § 103

It is noted that claims 46-48 and 59-68 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Marcenyac et al (U.S. Patent Publication 2004/0146547) in view of Granger et al (USPN 5,149,538) and Joseph Greensher et al (Pediatrics, Vol. 80(6), 949-951, 1987). This rejection is respectfully traversed.

As has previously been explained, the Marcenyac et al reference fails to disclose or suggest a disposal device or technique that deactivates a medicament on contact during normal disposal. That reference fails to disclose or suggest the use of activated carbon either with or without a pre-incorporated irritant or antagonist species. That reference further teaches the use of materials in the anti-abuse system that are incompatible with the use of activated carbon such as dyes, etc.

As previously explained, the combination with Granger, which, unlike the applicants' device, discloses an internal barrier system between the drug and the deactivating substance which may dissolve under certain circumstances, in combination with Marcenyac et al fails to disclose elements that would bring that combination closer to the present invention.

The article by Greensher et al discloses the use of activated charcoal to absorb toxins ingested by children as an

alternative to the practice of inducing vomiting by using syrup of ipecac. Applicants admit that the use of activated carbon as an adsorbent was known. The article reveals the use of activated charcoal in a specific situation that is different from that of the present invention. It should also be noted that the disclosure of the use of activated charcoal in the reference does not deal with a situation in which substances which might interfere with the effectiveness of the activated charcoal are present.

As previously indicated, the use of activated carbon in the Marcenyac et al system would interfere with the materials such as the dye which are important to his system. The charcoal would adsorb the dye and thereby destroy the effectiveness of the dye for abuse indication. The dye also would affect the ability of the activated carbon to adsorb the abusable substance. Thus, the combining of the teachings of Greensher et al with Marcenyac et al, it is believed, would not be considered by one skilled in the art. If this were to be done, it would destroy an important aspect of Marcenyac et al. The third reference, Granger et al, as indicated, does not disclose anything that would tend to the shortcomings of the combination. Thus, applicants submit that no prima facie case of obviousness can be sustained.


Given the above amendments, taken together with the remarks herein and considering the conference interview, applicants

believe that the present claims have been distinguished from the prior art references, withdrawal of this rejection and allowance of the present claims is respectfully requested.

Should minor issues remain which, in the opinion of the Examiner, could be resolved by telephone interview, he is invited to contact the undersigned attorney in an effort to resolve such issues and expedite prosecution of this application.

Respectfully submitted,

NIKOLAI & MERSEREAU, P.A.

A handwritten signature in cursive script, appearing to read "C. G. Mersereau".

C. G. Mersereau
Registration No. 26,205
900 Second Avenue South
Suite 820
Minneapolis, MN 55402
Telephone: (612) 339-7461